

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:** §  
§  
**BROUGHER, INC.** § **CASE NO. 16-35575-H4-11**  
**Debtor** § **(Chapter 11)**  
§ **JUDGE BOHM**

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**EMERGENCY MOTION FOR USE OF CASH COLLATERAL**

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This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 14 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

**TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:**

Comes Now, Brougher, Inc., Debtor-in-Possession herein, with this its Emergency Motion for Use of Cash Collateral, (hereinafter “the Cash Collateral Motion”), pursuant to 11 U.S.C. §§ 361 and 363, and in support thereof would respectfully show unto this Court as follows:

**I.  
PARTIES**

1. The Debtor may be served through its President, Wade Brougher, 8881 Hempstead,

Houston, Texas 77008, with a copy to its Counsel, Julie M. Koenig, 815 Walker, Suite 1040, Houston, Texas 77002; [Julie.Koenig@cooperscully.com](mailto:Julie.Koenig@cooperscully.com).

2. TBK Bank, SSB (“TBK”) is the Debtor’s only perfected secured creditor with an interest in cash collateral. TBK may be served through its registered agent, Gail Lehmann, 12700 Park Central Drive, Suite 1700, Dallas, Texas 75251 with a copy to James B. Allin, Senior Vice President, 12700 Park Central Drive, Suite 1700, Dallas, Texas 75251; [jallin@triumphcf.com](mailto:jallin@triumphcf.com).

**II.**  
**JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. §1334, venue is appropriate pursuant to 28 U.S.C. §1408, and this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (D), (K), (M) and )(O).

**III.**  
**NOTICE**

4. Sufficient and adequate notice of the Cash Collateral Motion has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rule 4001(c); Local Bankruptcy Rule 4001(c), and 4002-1(i) , as required by Sections 102, 361 and 363 of the Bankruptcy Code

**IV.**  
**FACTS**

5. Brougher, Inc. was formed on July 9, 1999. On December 27, 2012, it merged with a subsidiary, Machine USA, LLC with Brougher, Inc. being the surviving corporation after

the merger. The Debtor is in good standing with the Secretary of the State of Texas.

6. The Debtor is in the business of forging parts/equipment for the oil and gas industry.
7. On November 2, 2016, the Debtor filed a Voluntary Petition for Reorganization under Chapter 11 of Title 11 of the United States Code in order to protect its business as an ongoing concern. No Trustee has been appointed and the Debtor is operating as Debtor-in-Possession.

V.

**PREPETITION LIENS**

8. On March 4, 2016, the Debtor executed a loan agreement with TKB for a \$10,400,000 Revolving Credit Facility with interest at the rate of prime plus 4% and a \$2,650,000 Term Loan with interest at the rate of prime plus 5% (the “Loans”). A true and correct copy of the Loan Agreement is attached hereto as Exhibit “A”.
9. As of July 7, 2016, the Debtor executed a First Amendment to Loan Agreement with TKB to increase the availability block available to the Debtor and to require **for the first time** that the Debtor hire a restructuring consultant at its own expense but one who was satisfactory to TKB at its sole discretion. A true and correct copy of the First Amendment to Loan Agreement is attached hereto as Exhibit “B”
10. The Term Loan is payable in equal monthly installments of \$26,095.60 for a period of 180 months.
11. The Debtor can only borrow against the Revolving Credit Facility based upon the borrowing base. The borrowing base is calculated as up to eighty-five (85%) percent of the Debtor’s eligible accounts plus fifty (50%) of the Debtor’s eligible inventory plus

seventy-five (75%) percent of the net orderly liquidation value of the Debtor's eligible equipment, not to exceed \$10,400,000.00.

12. According to the UCC Financing Statement on file with the Secretary of the State of Texas, the Loans are secured by "all assets of the Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof". A true and correct copy of the UCC Financing Statement is attached hereto as Exhibit "C". The Debtor reserves the right to challenge the perfection of or security interest in the Debtor's assets.
13. On the date of filing the outstanding balance on the Loans was approximately \$8,074,317.40, consisting of (i) Revolving Loan in the amount of \$5,456,501.82 in principal plus \$38,804.08 in accrued interest and (ii) Term Loan in the amount of \$2,561,666.68 in principal plus \$17,344.82 in accrued interest.

**VI.**  
**CASH COLLATERAL**

14. The Debtor requires the emergency use of cash collateral in the amount of \$241,673.00 for the next twenty (20) days to meet payroll and expenses to continue its business operations. The majority of these funds are for payroll, supplies and continuing expenses. The anticipated income for this period is \$233,138 plus cash on hand. A copy of the anticipated budget for the next twenty (20) days is attached hereto as Exhibit "D" and fully incorporated herein by reference.
15. In addition, the Debtor requires the use of cash collateral in the amount of \$450,000 on a monthly basis. Without the use of cash collateral, the Debtor will be unable to retain or

pay employees, to maintain its assets, to pay payroll taxes, inventory, suppliers, overhead, and other expenses necessary for its reorganization.

16. As adequate protection for the use of cash collateral, the Debtor shall agree, with Court approval, to grant replacement liens to TKB equal to those validly held pre-petition, if any.
17. The security interests granted to TKB post-petition shall not have priority over (a) prior perfected and unavoidable liens and security interest in the property of the Debtor's estate as of the Petition Date other than their liens in the Pre-Petition Collateral, provided that (1) such liens and security interest are prior to other prepetition liens and security interests, valid, perfected, not adequately protected, and non-avoidable in accordance with applicable law; (b) the quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. §1930; and (c) any fees and expenses awarded to Debtor's Counsel or Debtor's Special Counsel pursuant to Court Order.

**WHEREFORE, PREMISES CONSIDERED,** Brougher, Inc., Debtor-in-Possession herein, prays that this Court conduct an Emergency Hearing on the Emergency Motion to Use Cash Collateral, enter an Order for Emergency Use of Cash Collateral for the Period November 2, 2016, through November 22, 2016, set a final hearing on the Motion, enter an Order for Interim Use of Cash Collateral after the hearing, and for such other and further relief, at law and in equity, as this Court deems just.

Respectfully submitted this 3<sup>rd</sup> day of November, 2016.

**COOPER & SCULLY, PC.**

By: /s/ Julie M. Koenig

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Attorneys for the Debtor

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the parties listed below and the parties on the attached service list, including parties requesting notice, via either ECF Notification, or by e-mail, or by first class mail, proper postage affixed, on the 3<sup>rd</sup> day of November, 2016.

By: /s/ Julie M. Koenig  
Julie M. Koenig

Office of the U.S. Trustee  
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Via ECF Notification

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James B. Allin, Senior Vice President,  
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[jallin@triumphcf.com](mailto:jallin@triumphcf.com)

Label Matrix for local noticing

0541-4

Case 16-35575

Southern District of Texas

Houston

Thu Nov 3 08:00:48 CDT 2016

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Brougher, Inc

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Beaumont, TX 77704-1914

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Core Refractory Systems  
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Houston, TX 77028-5836

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Irving, TX 75063-6075

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D & P Technologies, Inc.  
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D&S Machine Works, Inc.  
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D.C.G. Machine, Inc  
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Grainger, Inc.  
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Kansas City, MO 64141-6267

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Lehigh Specialty Melting Inc.  
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Ranger Lift Trucks  
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Austin, TX 73301-0030

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Frisa Forjados S.A. DE C.V.  
Valentin G. Rivero No. 127  
Col. Los Trevino Sta. Catarina,, N.L. Me

End of Label Matrix	
Mailable recipients	145
Bypassed recipients	1
Total	146